

### **REMARKS**

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested. Claims 1 and 18 are amended without prejudice or disclaimer. Applicants thank the Examiner for the comments in the Advisory Action and provide herein minor amendments and further arguments both to distinguish the claims from the cited art as well as additional arguments regarding why one of skill in the art would not have sufficient motivation or suggestion to combine these references.

#### **Rejection of Claims 1, 3, 4 and 6 Under 35 U.S.C. §103(a)**

The Office Action rejects claims 1, 3, 4 and 6 under 35 U.S.C. §103(a) as being unpatentable over Cobbley et al. (U.S. Patent No. 5,818,510) ("Cobbley et al.") in view of Peckover (U.S. Patent No. 6,119,101) ("Peckover") and further in view of Dimitrova (U.S. Patent No. 6,363,380) ("Dimitrova"). Applicants respectfully traverse this rejection and submit that even if combined these references fail to teach each limitation of the claims. Applicants further traverse the conclusion that one of skill in the art would have sufficient motivation or suggestion to combine these references.

First, Applicants respectfully submit that the combination of references fails to teach each limitation of the claims. The Advisory Action asserts that Cobbley et al. disclose the step of classifying a media collection as program content versus commercials which it characterizes as "secondary or associated data" such as real time stocks, weather reports, text associated with video and so forth. Applicants note that the substantive question in our response to the final Office Action questioned where the language "secondary or associated data" came from. Applicants note that the Advisory Action does not answer the question, but again appears to use this language as a broadening of the limitation "commercials" in claim 1. This broadening is necessary, as is conceded in the Office Action, Cobbley et al. fail to teach indexing commercials.

However, Applicants have made minor changes to this limitation in claim 1 to further distinguish even a broader characterization of commercials as "secondary associated data" as being taught in the reference. Specifically, claim 1 is amended to recite classifying the media collection as program content versus television commercials, wherein the television commercials are presented chronologically separate from the program content. Now, the portion of Cobbley et al. which discusses the real time stock, weather reports and so forth is found in column 15, lines 25-64. Here, Cobbley et al. disclose that in one aspect of their invention:

"information is made available to individual users from broadcast source 105 in addition to the video and audio broadcast information being transmitted. This additional information is transmitted on one of the available VBI lines. This additional information could be displayed to end users periodically or on request. For example, one type of information that could be made available is a real-time stock monitor. By way of another example, current weather reports could be transmitted, even if they are not part of the normal news broadcast. Alternatively, text associated with the video and audio broadcast may be transmitted by broadcast source 105, such as background information related to a particular news story."

Applicants note that this portion of the reference, as well as the other portions cited in the Advisory Action (columns 3-6 and 9-10), all focus on how to manage broadcast information that is part of a news broadcast. See, e.g., column 3, line 65 through column 4, line 12 in which the example of the broadcast information is a news broadcast that is divided into several program segments that each includes multiple story segments and so forth. Applicants respectfully submit that in each instance, Cobbley et al. fail to disclose anything regarding a classification of a media collection as program content versus television commercials, wherein the television commercials are presented chronologically separate from the program content. This is because all of the program segments, real-time stock monitors, weather reports and associated text are all taught as being presented "in addition to the video and audio broadcast information being transmitted." Thus, Applicants submit that claim 1 further recites a distinguishing feature that is not generically "secondary or associated data" but now must be considered commercials that have

particular characteristics with regard to the broadcast information being transmitted.

Furthermore, Applicants note that inasmuch as Cobbley et al. fail to disclose any commercials that are presented separate from the program content, that even a broader interpretation of this as “secondary or associated data” that is presented separate from the program content is certainly not taught as well. Therefore, the step of classifying a media collection as program content versus such television commercials is also not taught by Cobbley et al.

Next, Applicants shall explain how Peckover fails to teach the recited television commercials that are classified as part of the classifying the media collection. Notably, the Advisory Action concedes that Cobbley et al. fail to teach “indexing commercials”, the Advisory Action asserts that Peckover provides the necessary teaching. Applicants note that this characterization of the limitation of claim 1 is actually wrong. There is no “indexing” of commercials claimed. In fact, inasmuch as claim 1 classifies a media collection as program content versus television commercials, the indexing recited in claim 1 is actually the indexing of the media collection to create an indexed library based on the identified program segments and synchronized speech. Accordingly, the indexing is not of the television commercials but of the media collection and is not based on the television commercials but is rather based on the identified program segments. Applicants submit that this incorrect characterization in the Advisory Action further weakens the remaining analysis.

For example, the Advisory Action states that “Peckover teaches indexing advertisements” citing columns 14-15 and 23-24. The Advisory Action then simply states that Cobbley et al. as modified by Peckover teaches different certain indexing features but is silent as to the use of speaker voice characteristics such as natural language input. Applicants have amended claim 1 to recite that the commercials are television commercials because the advertisements in Peckover taught in columns 14-15 and 23-24 are expressly not television commercials based on the

teachings of Peckover. For example, Peckover, in his introduction, expressly criticizes the viewing of advertisements on television as problematic. See, e.g., column 1, lines 45-55, column 2, lines 19-56 and column 10, lines 61-65. Here, Peckover explains that when customers rely on ephemeral television and radio advertisements to learn of products and special promotions, these ads seldom arrive when the customer is ready to make a selection. They also note that it is very difficult for consumers to pick out items of interest of daily bombardment of television advertising. Thus, the invention of Peckover is expressly provided in contrast to television advertising. The object of Peckover is cited as to provide a system that facilitates the gathering and exchanging of market information in support of electronic commerce. The advantages that are identified as part of the fundamental problems of the previous flow of market information identified in column 12, lines 13-41 which include features that are unavailable to television advertisers. Accordingly, the system of the Peckover invention is a "virtual marketplace" where various kinds of agents represent human owners. See column 14, lines 26-31.

In sum, Applicants respectfully submit that the advertisements that are a part of a sell ad manager function 128 that is disclosed in columns 23 and 24 are part of the Peckover "virtual marketplace" and are expressly taught as being separate from television advertisements. Thus, Applicants respectfully submit that the revision of claim 1 to recite that the commercials are television commercials clearly distinguishes the advertisements references in columns 14, 15, 23 and 24 of Peckover. Accordingly, Applicants respectfully submit that with these minor corrections to the characterization of the invention of claim 1 as well as the minor amendments to the claims, renders claim 1 patentable and in condition for allowance even if Peckover were to be combined with Cobbley et al.

With regards to Applicants' argument that, by a preponderance of the evidence, one of skill in the art would not have sufficient motivation or suggestion to combine these references,

Applicants shall add a further and more potent arguments than has been previously provided. Applicants first note that the Advisory Action merely uses boilerplate language to respond to Applicants' arguments regarding the motivation or suggestion to combine. Applicants note that the MPEP requires the Examiner to reconsider all evidence and clearly communicate findings and conclusions. For example, MPEP 2144.08, Section III states that "the Office Action should clearly communicate the Office's findings and conclusion, articulating how the conclusions are supported by the findings." However, Applicants respectfully submit that the Advisory Action merely uses boilerplate language rather than analyzing the actual suggestive power of each of the references.

For example, Applicants have not merely individually attacked the references but have provided an analysis and shall provide further analysis regarding what the references would suggest to one of skill in the art. The argument set forth above regarding the fact that Peckover criticizes the deficiencies in terms of selling products and services through the use of television advertisements necessarily supports Applicants' position that one of skill in the art would not be likely to combine its teachings with Cobbley et al. which clearly focus on computer systems for receiving broadcast information. For example, the suggestive power of Cobbley et al. is certainly focused on systems for receiving television broadcast information and their invention relates to caching video and audio information and providing the cached video and audio information to end users in an indexed manner. See column 1, lines 10-15. Furthermore, under the Summary of the Invention, Cobbley et al. explain that their method provides broadcast information with indexing and includes a stream of broadcast information including multiple video and audio information segments that are generated and transferred to a receiving device. The reason one of skill in the art would, by a preponderance of the evidence, not likely combine the teachings of Cobbley et al. with Peckover is that Peckover expressly state that television

advertising is deficient. For example, column 2, line 49 of Peckover states, with regards to television advertisements that “consumers can’t even chose a preferred format for receiving advertisements. If the merchant only advertises only in broadcast media, the consumer won’t be able to find the information in today’s newspaper.” Furthermore, Peckover characterizes advertising which includes television advertising as a part of a “daily bombardment” of advertising. The explain that television, radio spots, billboards, street corner kiosks, the daily newspaper, direct mail coupon packages and so forth vie for the consumer’s attention daily. They conclude that it is no wonder that consumers become desensitized to the advertising around them and fail to see the items that are truly of interest. See column 2, lines 26-41.

Furthermore, Applicants note that the teachings of Cobbley et al. also, as has been noted above, primarily focus on broadcast news programs. Thus, as has been conceded in the Advisory Action, as well as highlighted by Applicants, there is no suggestion or teachings with regards to handling commercials in Cobbley et al. Thus, Applicants submit that there is substantial evidence in their favor with regards to a lack of sufficient motivation or suggestion to combine these references. (Applicants are not arguing that there is no motivation to combine but that the evidence against the combination outweighs the evidence in favor.) One of skill in the art would not be likely to view Cobbley et al. and its focus on broadcast news and then turn to Peckover with its express criticism of television advertising and for some reason incorporate features of the “virtual marketplace” of Peckover because it clearly does not relate to broadcast television. Applicants submit that in this regard, these references are essentially non-analogous to one another as has been previously argued. Applicants note that this is not merely attacking the individual references but pointing out that blending these references would essentially require a substantial reconstruction or redesign of the elements shown in Cobbley et al. as well as require a change in the basic principle of operation under which Cobbley et al. was designed to operate.

See MPEP 2143.01, Section VI. In other words, Applicants submit that substantial evidence is now on the record that the proposed combination of Peckover with Cobbley et al. would require a change in the principle operation of the prior art invention being modified. This is clear because if concepts from the virtual marketplace in Peckover were to be incorporated into Cobbley et al., then clearly Cobbley et al. could no longer be a television broadcast environment. Inasmuch as this is expressly discounted as deficient according to Peckover. Thus, these references cannot be combined without either eliminating the news broadcast context of Cobbley et al. or applying the "virtual marketplace" of Peckover into the news broadcast, without commercials, context of Cobbley et al. As the MPEP states, if such modification or change in the principle operation of the prior art is necessary, "then the teachings of the references are not sufficient to render the claims *prima facie* obvious." Therefore, Applicants remind the Examiner that the standard upon which the evidence is evaluated is only by "a preponderance of the evidence." Thus, Applicants only need to provide slightly more evidence in their favor than is in favor of combining the references. Applicants submit that with these express teachings away from the combination of these references, Applicants submit that they have at least met a 51% threshold in providing substantial evidence on the record that one of skill in the art would not look to force a blending of these references. Therefore, Applicants submit that for this additional reason, Peckover should not be combined with Cobbley et al. and these claims are patentable and in condition for allowance. Applicants therefore submit that claims 1, 3, 4 and 6 are patentable and in condition for allowance.

**Rejection of Claims 5 and 7 Under 35 U.S.C. §103(a)**

The Office Action rejects claims 5 and 7 under 35 U.S.C. §103(a) as being unpatentable over Cobbley et al. in view of Peckover and further in view of Dimitrova and further in view of Hoffert et al. (U.S. Patent No. 5,983,176) ("Hoffert et al."). Applicants traverse this rejection

and submit that for the same reasons set forth above, namely, that Cobbley et al. should not be combined with Peckover and the Cobbley et al. fail to teach several limitations of the parent claim 1, that claims 5 and 7 are patentable and in condition for allowance.



**CONCLUSION**

Having addressed all rejections and objections, Applicants respectfully submit that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited. If necessary, the Commissioner for Patents is authorized to charge or credit the **Novak, Druce & Quigg, LLP, Account No. 14-1437** for any deficiency or overpayment.

Respectfully submitted,

By: 

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